

Bill No. 37-04  
Concerning: Animal Control-- Amendments  
Revised: 9/20/05 Draft No. 10  
Introduced: November 9, 2004  
Enacted: September 20, 2005  
Executive: September 27, 2005  
Effective: December 27, 2005  
Sunset Date: None  
Ch. 22, Laws of Mont. Co. 2005

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

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By: Council President at the Request of the County Executive

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**AN ACT** to:

- (1) define certain terms and procedures;
- (2) add animal cruelty violations;
- (3) clarify certain procedures;
- (4) replace outdated Maryland Code references with correct citations;
- (5) establish a leash requirement for dogs with certain exceptions;
- (6) make certain technical corrections; and
- (7) generally[[,]] amend the Animal Control Law.

By amending

Montgomery County Code  
Chapter 5, Animal Control  
Sections 5-101, 5-104, 5-201, 5-202, 5-203, 5-301, 5-302, 5-303, 5-304, 5-305, 5-306, 5-402, and 5-404

By adding

Section 5-307

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

*The County Council for Montgomery County, Maryland approves the following Act:*

**Sec. 1. Sections 5-101, 5-104, 5-201, 5-202, 5-203, 5-301, 5-302, 5-303, 5-304, 5-305, 5-306, 5-402, and 5-404 are amended, and Section 5-307 is added, as follows:**

**5-101. Definitions.**

\* \* \*

At large[.]: A dog, except a service animal, is at large if it is outside the owner's premises and not leashed, unless it is in a dog exercise area designated by the Maryland-National Capital Park and Planning Commission or is participating in a qualified activity. [[An]] Any other animal is at large if it is outside the owner's premises and is not leashed or [[otherwise restrained]] immediately responsive to verbal or non-verbal direction. For purposes of this Chapter or any other animal control law, the common area of a homeowners' association, condominium, or cooperative is not the owner's premises.

\* \* \*

Bite[.]: [[The act of seizing]] Seizing or wounding with the teeth or mouth[;]] that causes pain or injury. [[the act of wounding or separating with the teeth; to cause sharp pain; to hurt or injure; or to seize with the teeth, so that they enter or nip the thing seized. A bite or the act of biting does not require a person's or an animal's skin to be broken.]] A minimal medical or cosmetic injury, such as a puncture or bruise or damaged clothing, must be shown as evidence of a bite.

\* \* \*

[[Effective Control: Verbal or non-verbal direction that an animal immediately obeys.]]

\* \* \*

Non-commercial kennel: A building or land for boarding, breeding, or care of domestic animals that belong to the owner of the building or land and are kept

for show or hunting, or as pets. Non-commercial kennel does not include [a riding stable] an equestrian facility.

\* \* \*

[[Otherwise restrained: Physical restraint or under effective control.]]

\* \* \*

Provocation: [[Biting or attacking does not make an animal dangerous, and attacking does not make an animal potentially dangerous,]] An animal's behavior is provoked if the behavior is:

- (1) in response to current or previous tormenting, teasing, abuse, threat, or assault by a person or animal;
- (2) in response to pain or injury;
- (3) to protect the animal, its offspring, or other animals in the same household; or
- (4) directed against a person who is:
  - (A) not lawfully present where the action or behavior occurs;
  - (B) injuring, threatening, or endangering the animal's owner or another person in the vicinity; or
  - (C) damaging or unlawfully entering the property, household, or enclosure where the animal is harbored.

\* \* \*

Riding School or stable: [A place where riding instruction is provided for a fee, or horses, ponies, donkeys, mules or burros are offered for hire, boarded, traded, bought, or sold.] [[See Section 59-A-2.1, "Equestrian Facility."]] An equestrian facility, as defined in Section 59-A-2.1.

\* \* \*

Service animal: Any guide or signal dog or other animal trained to work or perform tasks for a person with a disability, including[, but not limited to,]

guiding a person with impaired vision, alerting a person with impaired hearing to intruders or sounds, providing minimal protection or rescue work, pulling a wheelchair, or fetching dropped items, or any dog used by the Department of Police, Sheriff's Office, Fire and Rescue Service, Department of Homeland Security, or any federal or state law enforcement or search and rescue agency.

\* \* \*

Unwanted contact: An animal's ~~[[Unwelcome]]~~ ~~unwelcome~~ or unsolicited threatening physical contact or close proximity ~~[[by an animal]]~~ to a person or ~~[[another]]~~ a domesticated animal that occurs outside of an owner's property and ~~[[would be expected to]]~~ causes alarm in a reasonable person, such as biting, chasing, tracking, inhibiting movement, or jumping.

\* \* \*

#### **5-104. Animal Matters Hearing Board.**

##### **(a) Jurisdiction.**

(1) As provided in this Chapter, the Animal Matters hearing board has jurisdiction to hear:

(A) original complaints involving allegations of violations of this Chapter or a violation of the terms of an adoption agreement; and

(B) appeals from ~~[[decisions or orders]]~~ any decision or order of the Director~~[[, Animal Services Division]]~~.

(2) The Board ~~[[may]]~~ must not ~~[[decide a matter or]]~~ enter an order that conflicts with a decision of the County Circuit or District Court.

(3) The Board ~~[[may]]~~ must not hear a complaint or an appeal involving the seizure of an animal if the owner has been arrested and charged with violating any provision of ~~[[sections~~

10-601, et seq., of the Maryland]] Title 10, Subtitle 6 of the Criminal Law [[Code Annotated]] Article or Section 21-1004.1 of the Transportation [[Code Annotated]] Article of the Maryland Code until the charges have been finally resolved by the [[courts]] court with jurisdiction.

(b) Complaints. A person [[can]] may file a complaint with the Board alleging a violation of this Chapter or a violation of an animal [[control]] shelter adoption contract. A complaint must be filed within one year after the [[act complained of]] alleged violation occurred.

[(a)] (c) Membership.

\* \* \*

[(b)] (d) Duties. The Board must:

- (1) decide complaints and appeals under this Chapter, including complaints alleging a violation of an animal shelter adoption contract;
- (2) recommend standards to maintain regulated facilities;
- [(3) review the annual proposed budget for the animal shelter and make budget recommendations for the shelter to the Executive and the Council;] and
- [(4)] (3) report annually to the Executive and Council on the Board's activities and any recommendations for improving animal control laws, regulations, and programs.

[(c)] (e) Authority. The Board may:

\* \* \*

- (8) In a case based [[upon]] on a complaint or appeal, the Board, in addition to ordering the payment of damages, may order the

losing party to pay ~~[[another party's]]~~ filing fees or other reasonable hearing-related expenses ~~[[related to the hearing, in addition to ordering payment of damages]]~~.

[(d)] (f) Procedures: Hearings on Original Complaints.

(1) The Administrative Procedures Act (Chapter 2A) applies to the Board's hearings and decisions, unless otherwise expressly provided in this Chapter. The Board may issue procedural rules to implement this subsection. The Board may hold an emergency hearing under Section 2A-9.

(2)[(A)] Except as provided in Section 2A-9, the Board must [send or deliver written notice of a matter before the Board to each person aggrieved by an action or proposed action of the Director, the Board, or an animal control officer at least 15 days (or shorter period if all parties agree) before holding a public hearing on the matter. The Board must hold a hearing at the request of a person aggrieved, and may hold a hearing at the request of another party to the matter (which may include an animal control officer) or on the Board's own initiative.] provide notice of any hearing to the parties at least 15 days before the hearing. The parties may agree to a shorter notice period. The Board may provide notice by first class mail[.], which [[If notice is provided by first class mail, the notice]] is effective 3 days [[following]] after the notice [[being]] is placed in the mail, postage prepaid, to the last known address of the person to whom the notice is addressed.

[(B) If the Board finds that the circumstances justifying an action or proposed action (including the seizure, impoundment, or humane euthanasia of an animal):

- (i) constitute an immediate threat to the health or safety of an animal, a person, or the public, the Board may provide the notice and any requested hearing as soon as practical after the action; or
- (ii) do not constitute an immediate threat, the Board must provide the notice and any requested hearing before ordering the action or modifying an action of the Director or an animal control officer.]

[(3) The Board must notify the Director and each party to a complaint by first class mail sent, or personal delivery made, at least 15 days (or shorter period if all parties agree) before a hearing, specifying the time and place of the hearing.]

[(4) Appeals to or from the Board are subject to the requirements of Section 5-306.]

[(e)] (g) Fee. The Executive may set by regulation a fee for filing a complaint with the Board. The filer must pay the fee to the Division [when filing a complaint]. The Board or the Animal Control Officer may waive the filing fee in response to a [complainant's] written request. If the parties agree to a consent order after mediation, the Board may refund the filing fee. [The Board may order the losing party to pay another party's filing fees or other reasonable expenses related to the hearing, in addition to ordering payment of damages.]

## **5-201. Cruelty.**

(a) Violation. A person must not violate State laws against cruelty to animals, such as by:

- (1) violating general prohibitions against cruelty (Md. Code,

- [Article 27, §59] Criminal Law Article [[§§ 10-601, et seq.]]  
Title 10, Subtitle 6);
- (2) killing a dog or cat by an inhumane method (Md. Code, [Article 27, §59A] Criminal Law Article §10-611);
  - (3) abandoning a domestic animal (Md. Code, [Article 27, §60] Criminal Law Article §10-612);
  - (4) giving away animals under certain circumstances (Md. Code, [Article 27, §60A] Criminal Law Article §10-610);
  - (5) selling or importing certain puppies and kittens (Md. Code, [Article 27, §60B] Criminal Law Article §10-613);
  - (6) selling or coloring a chick (Md. Code, [Commercial Law Article, §11-904] Criminal Law Article §10-614);
  - (7) injuring certain horses (Md. Code, [Article 27, §61] Criminal Law Article §10-620);
  - (8) killing or trapping a carrier pigeon (Md. Code, [Article 27, §64 to 66] Criminal Law Article §10-622);
  - (9) poisoning a dog (Md. Code, [Article 27, §69] Criminal Law Article §10-618);
  - (10) abuse or neglect of an animal (Md. Code, Criminal Law Article, §10-604);
  - (11) aggravated cruelty to animals, in general, (Md. Code, Criminal Law Article, §10-606);
- [(10)] (12) failing to take actions required for the driver of a motor vehicle that hits and injures an animal (Md. Code, Transportation Article, §20-106); or
- [(11)] (13) leaving a cat or dog in a vehicle under certain circumstances (Md. Code, Transportation Article, § 21-1004.1).



\* \* \*

**5-202.      Dangerous and Potentially Dangerous Animals.**

(a) Violation.

(1) Except as provided in subsection (d), a [A] person must not import, sell, trade, buy, barter, breed, raise, keep, or possess:

(A) a wild animal; or

(B) any animal that the County or any other jurisdiction finds is dangerous or a threat to public health or safety, including types of animals excluded from State law prohibitions on dangerous animals.

(2) An animal is dangerous if the animal is:

(A) a “dangerous dog” as defined in Md. Code, [Article 27, §70E] Criminal Law Article §10-619;

(B) any other animal that, without provocation [(as described in subsection (e))], has killed or severely injured a person [, unless the Board finds that the animal is not dangerous];

(C) an animal that poses a physical threat to humans because of specific training or demonstrated behavior, or because the animal’s bite is poisonous; or

(D) a potentially dangerous animal that:

(i) bites a person without provocation;

(ii) attacks a person or animal without provocation; or

(iii) kills or severely injures a domestic animal outside the property of the potentially dangerous animal’s owner.

(3) An animal is potentially dangerous if:

(A) the animal:

- (i) bites a person without provocation;
- (ii) kill[ed]s or severely injure[d]s a domestic animal outside the attacking-animal owner's property;
- (iii) attack[ed]s or has unwanted contact with a person or animal without provocation [[as described in subsection (e)]]; or
- (iv) was declared by the County or another jurisdiction as potentially dangerous (even if the other jurisdiction uses a different term); and
- (B) the Division notifies the owner that the animal is potentially dangerous.
- (C) An animal's actions in a qualified activity do not make the animal potentially dangerous.
- (b) Declared dangerous or potentially dangerous elsewhere. An owner of an animal declared dangerous or potentially dangerous in another jurisdiction must remove the animal from the County within 10 days after receiving a citation or other notice of a violation of this Chapter unless the Director waives this requirement and imposes conditions or restrictions [[as set forth in]] under subsection (d) for the animal to remain in the County.
- \* \* \*
- (d) Confinement and microchipping. [If a dangerous animal is allowed in the County, the animal's owner must keep the animal confined in a building or other secure enclosure to prevent direct contact between the animal and human beings or other animals.] The Director or the Board may impose any restriction or condition, including confinement or microchipping the animal, [[upon]] on the owner of a dangerous or

potentially dangerous animal that is reasonably [[calculated]] expected to protect the public health or safety. A person must not release the animal from confinement unless the animal is:

- (1) securely muzzled in a manner approved by the Division;
- (2) leashed; and
- (3) under the control of a person who is at least 18 years old [[who]] and is physically able to restrain the animal.

[[e)] Provocation. Biting or attacking does not make an animal dangerous, and attacking does not make an animal potentially dangerous, if the behavior is:

- (1) in response to current or previous tormenting, teasing, abuse, threat, or assault by a person or animal;
- (2) in response to pain or injury;
- (3) to protect the animal, its offspring, or other animals in the same household; or
- (4) directed against a person who is:
  - (A) not lawfully present where the action or behavior occurs;
  - (B) injuring, threatening or endangering the animal's owner or another person in the vicinity; or
  - (C) damaging or unlawfully entering the property, household, or enclosure where the animal is harbored.]]

(e) [[An animal declared]] [[If]] When a potentially dangerous[[,]] animal [[when]] is off the owner's premises or property [[of the owner,]] it must be:

- (1) on a leash or harness; and
- (2) under the control of a person who is at least 18 years old [[who is]] and is physically able to restrain the animal.

\* \* \*

**5-203. Public nuisance and other violations.**

(a) Violation. An owner must not:

(1) Allow [a dog or unaltered] an animal other than an altered cat to be at large. An animal that is participating in a qualified activity is not at large unless the animal leaves the activity.

\* \* \*

(11) sell, trade, or give a domesticated animal to another person [[on]] at a place open to the public [[property]], except a business licensed to sell animals under Section 5-404.

\* \* \*

(c) [At large. An animal is at large if it is outside the premises of its owner and not leashed or otherwise restrained to prevent unwanted contact with a person or another animal. For purposes of this Chapter or any other animal control law, the common area of a homeowners' association, condominium or cooperative is not the owner's premises. A dog participating in a qualified activity is not at large unless the dog leaves the activity.] [[Unwanted Contact.]] An owner must prevent the owner's animal from having unwanted contact with a person or another domesticated animal at all times.

\* \* \*

**5-301. General provisions.**

\* \* \*

(c) Types of enforcement.

(1) Except as provided in paragraph (2), the Director or an animal control officer may, to enforce an animal control law or protect the health or safety of an animal, a person, or the public:

- (A) seize, impound, and dispose of an animal; or
- (B) take any other action necessary ~~[[()]]~~ or order an owner to take any other action necessary ~~[(I)]~~ to enforce the law, including ordering that a microchip be inserted into an animal.

[The Board may order the Director or an animal control officer to take an action described in this paragraph.]

- (2) The Director or an animal control officer must not destroy an animal under paragraph (1) unless:

(A) the Board has ordered ~~[[the destruction of]]~~ the animal to be destroyed; or

(B) the Director, an animal control officer, or the Board finds that destruction of the animal is necessary to prevent an immediate threat to public health or safety. If an owner requests a hearing within 5 days after the County notifies the owner of any action under this paragraph, the Board must hold a hearing after the fact on the action and may order the County to reimburse the owner for the resale value of the animal if the action was not justified; or

(C) after 5 days, the owner has ~~[[failed to file]]~~ not filed an appeal to the Board.

\* \* \*

(h) Board Order to Take Action. As a result of an adjudication of a complaint or appeal, the Board may order the Director or an animal control officer to take an action described in paragraph (c)(1).

**5-302. Special enforcement provisions regarding specific offenses.**

- (a) Dangerous or potentially dangerous animals.

(1) An animal control officer immediately may seize, impound, and humanely euthanize, at the owner's expense, an animal that the Director, an animal control officer, or the Board finds is dangerous or potentially dangerous and poses an immediate threat to public health or safety. [If an owner requests a hearing within 5 days after the County notifies the owner of any action under this paragraph, the Board must hold a hearing after the fact on the action and may order the County to pay reasonable compensation if the action was not justified.]

(2) If the animal poses no immediate threat, the owner may, within 5 days after the County notifies the owner about the violation, appeal the violation or action to the Board[[:]] and request a hearing. The County must not dispose of the animal during the 5-day period for filing an appeal, or while an appeal is pending.

(b) Public nuisance and other violations. [An animal control officer may enforce Section 5-203 if the officer observes a violation or receives a complaint under oath from at least one witness to a violation.] The Board, the Director, or an animal control officer may order any action necessary to abate a public nuisance or any other violation of Section 5-203.

\* \* \*

### **5-303. Impoundment.**

\* \* \*

(c) Prepayment for care.

(1) The animal's owner must prepay any boarding costs before and during any appeal to the Board, unless waived or modified as provided in this Chapter. Within [3] 5 days after receiving notice that an

animal was impounded under any provision of this Chapter, the animal's owner must pay to the County the estimated cost of caring for the animal for the 30-day period beginning on the date the animal was impounded. The Director must estimate the cost, which must include the cost of food, veterinary care, and other necessities that a responsible owner would provide for the animal and may include other costs, such as pro rata staffing and administrative expenses, allowed by regulation. The owner must pay in cash or by another method acceptable to the Division.

\* \* \*

(d) Multiple impoundments.

(1) If an unaltered dog or cat is impounded 2 or more times, the owner must have the animal altered at the owner's expense within 30 days [[of release]] after the animal is released from impoundment or surrender the animal to the Director unless:

(A) the owner appeals to the Board within 10 days after the date of the second violation; and

(B) the Board after a hearing waives this requirement or orders other action.

(2) The Director must not allow an owner to redeem an animal impounded less than 12 months after the animal was released from a previous impoundment, unless [[an]] the owner has successfully appealed any citation arising out of the prior impoundment, until the Director has issued: [, and the owner has paid or successfully appealed]

(A) a citation for the current violation; and

(B) an order designed to prevent future violations.

\* \* \*

**5-304. Disposition.**

- (a) Types of disposition. An animal impounded by the [County] Division may be:

\* \* \*

**5-305. Penalties.**

\* \* \*

- (c) Penalties. A violation of:

- (1) Section 5-201 is a Class A civil violation for which the penalty must not exceed the maximum penalty allowed by State law for the equivalent offense under State law;
- (2) Section 5-202 is a Class A violation;
- (3) any paragraph of Section 5-203(a) that is not also a violation of Section 5-203(b) is a Class B violation; [and]
- (4) Section 5-203(b) and 5-203(c) are [is a] Class A violations[.];  
and
- (5) Section 5-402(c) is a Class A violation.

**5-306. Appeal to the Board.**

- (a) [Appeal to the Board.] Time for Noting Appeal. Except as provided in Section 5-104(a), [A] a person aggrieved by a decision of the Director or an animal control officer may appeal the decision to the Board within 5 days after the Director or the animal control officer notifies the owner about the decision. The [[County]] Director or animal control officer must not dispose of the animal during the 5-day period for filing an appeal, or while an appeal is pending, unless authorized to do so under this Chapter. [The Board may modify a decision of the Director or an animal control officer only if the appellant proves by a preponderance



of the evidence that the decision was arbitrary, illegal, or not based on substantial evidence. The Board must issue a written decision explaining the factual and legal basis for the decision.]

[(b) Appeal from the Board. A person aggrieved by an order of the Board may appeal the order under Section 2A-11 within 10 days after the Board issued the order.]

(b) Burden of Production. Notwithstanding the provisions of Section 2A-8(d) [[of the Code]]], the Appellant has the burden of [[persuasion and of]] going forward with the production of evidence before the Board.

(c) Filing Fee. In addition to any other requirement imposed by this Section, the owner appealing a decision of the Director or an animal control officer must pay a filing fee [[as may be]] established by [[the]] executive [[by]] regulation. The Board or the Director may waive the filing fee in response to an appellant's request.

[(c) Requirements for appeal. If an owner appeals an impoundment, seizure, or disposition order issued or affirmed by the Board, the owner must board the animal at a facility approved by the Division. The owner must pay the cost of impounding the animal before and during the appeal, or if the Board allows, post a bond to pay these expenses if the owner does not prevail in the appeal. If the owner fails to meet these requirements, the animal is abandoned.]

(d) Board's Decision. The Board may modify a decision of the Director or an animal control officer only if the appellant proves by a preponderance of the evidence that the decision was arbitrary, illegal, or not based on substantial evidence. The Board must issue a written [[decision]] opinion explaining the factual and legal basis for [[the]] its decision.

- 433        (e)    Boarding of Animal -- Approved Facility]] Pending Board Decision.  
 434        If the owner [[is appealing]] timely appeals an impoundment or  
 435        seizure, [[by the Division, or a disposition order issued or affirmed by  
 436        the Board, the owner must board the animal at the owner's expense at  
 437        a facility approved by the Division]] the owner may also seek review  
 438        of the Director's determination of boarding costs [[,]] by filing an  
 439        appeal with the Chief Administrative Officer within 5 days [[of  
 440        issuance of]] after the [[Director's]] Director issues a demand for  
 441        prepayment. The Chief Administrative Officer, or a designee, must  
 442        review the Director's decision within 2 business days [[of receipt of]]  
 443        after receiving the appeal. The owner must provide the Chief  
 444        Administrative Officer with information sufficient to show that  
 445        requiring prepayment of boarding costs would be a serious financial  
 446        hardship on the owner. The Chief Administrative Officer may ask the  
 447        owner to provide additional information at an informal hearing  
 448        conducted in person or by telephone. The Division must not require  
 449        the owner to pre[-]]pay any boarding costs pending the Chief  
 450        Administrative Officer's decision. The Chief Administrative Officer  
 451        may make any decision the Director could have made such as  
 452        requiring the owner to pre[-]]pay boarding costs retroactive to the  
 453        initial boarding date of the animal, posting a bond, or placing the  
 454        animal in a suitable facility at the owner's sole expense. The owner  
 455        may ask the Board to review the Chief Administrative Officer's  
 456        decision regarding prepayment of boarding costs as part of its review  
 457        of the underlying appeal.
- 458        (f)    Boarding of Animal -- [[Division Facility]]After Board Decision. [[If

the animal is boarded at a Division facility, the]] The owner must pay  
[[the]]any boarding costs [[of boarding]] for the animal before and  
during any appeals, or if the Board allows, post a bond to pay these  
expenses if the owner does not prevail in the appeal.

(g) If the owner [[fails to]] does not meet the requirements of this Section,  
including any requirement to pre[[ ]]pay boarding costs, the animal  
[[is]] must be treated as abandoned and becomes the County's property.

**5-307. Appeal from the Board.**

A party aggrieved by an order of the Board may appeal the order under  
Section 2A-11 within 10 days after the Board issues the order.

**5-402. Rabies control.**

\* \* \*

(c) An owner must vaccinate a [[dogs, cats, and ferrets]] cat, dog, or  
ferret older than 4 months of age[.]] against rabies and provide proof  
of the most recent vaccination to an animal control officer within 24  
hours.

\* \* \*

**5-404. Animal business licensing.**

(a) Businesses requiring a license. The County Executive must issue  
 regulations to require and set conditions for an annual County license  
 to operate:

- (1) a pet shop;
- (2) a commercial kennel;
- (3) as a fancier;
- (4) [a riding school or stable] an equestrian facility;
- (5) a benevolent organization; or

485                   (6)   [as a groomer, trainer, or] a guard dog operator who places a  
 486                               dog for hire on private property.

487   *Approved:*

488	/s/	9/22/05
	George Leventhal, Vice President, County Council	Date

489   *Approved:*

490	/s/	9/27/05
	Douglas M. Duncan, County Executive	Date

491   *This is a correct copy of Council action.*

492	/s/	9/29/05
	Linda M. Lauer, Clerk of the Council	Date